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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1083

APPALACHIAN VOLUNTEERS, INC., ET AL. - - - - - - - Petitioners

versus

CHARLES CLARK, ETC., ET AL. - Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

C. KILMER COMBS
207 Caroline Avenue
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WESTERFIELD-BONTE CO., INC., 619 W. KENTUCKY, LOUISVILLE, KY.

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CHARLES CLARK, ETC., ET AL. - - *Respondents*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE QUESTION PRESENTED

Is there any substantial ground for granting the writ under Rule 19 of this Court?

STATEMENT

The statement of petitioners is reasonably accurate insofar as it goes. However, it neglects the action of the petitioners upon which basis they were enjoined in the state court.

It is true that the Vista workers and others discussed the school lunch program with the Superintendent and perhaps some of the members of the County Board of Education prior to the filing of the action in the state court on August 12, 1969.

The petitioners neglect to mention the fact that for some two weeks prior to the filing of the complaint

in state court the Vista workers led a charge to interfere with and interrupt the operation of the Floyd County Board of Education in Prestonsburg, Kentucky. They attacked the Superintendent of Schools bodily and attempted to storm the Administration Building. (See Appendix 1b.) Upon that basis the Vista workers and others were restrained in the state court from entering upon this property.

ARGUMENT

There Is No Basis On Which to Grant the Writ

We think questions two and three, page 2 of the petition, are effectively and decisively answered by the opinion of the United States Court of Appeals, Sixth Circuit, pages 1-16a of the Appendix of the Petitioners.

The respondents also feel that question one, page 2 of the Petition, is also effectively answered by the opinion below. It is clear that 28 USC, Section 1443 (2) granting appeal on remand deals with civil rights "defined in terms of racial equality." Georgia v. Rachel, 384 U. S. 780 (1966), at 384 U. S. 791. Such is not here involved. We are unable to find any justification for granting the writ.

CONCLUSION

This case was carefully considered by the District Court and by the United States Court of Appeals for the Sixth Circuit. The matter is still before the state court and no move has been made to desolve the temporary restraining order as the petitioners are entitled to do under the Kentucky Rules.

It is our feeling that the law as enacted by Congress and as announced by this court has been followed.

Respectfully submitted,

C. Kilmon Combs
207 Caroline Avenue
Pikeville, Kentucky 41501
Attorney for Respondents

FLOYD CIRCUIT COURT

Civil No. 1884

CHARLES CLARK, Individually,
CHARLES CLARK, Superintendent of Schools of Floyd County, Kentucky, and
FLOYD COUNTY BOARD OF EDUCATION — *Plaintiffs*

v.

APPALACHIAN VOLUNTEERS,
VOLUNTEERS IN SERVICE TO AMERICA,
STEVE BROOKS, PAULINE FRANCUM, HERSHELL NICK FRANCUM, NICK MARRADARAS, LINDA GRIDLEY, CONNIE KING, DAVID WALLS, NORMAN THORNBROOK, WOODROW ROGERS, EDWARD BLANKENSHIP, BARBARA NEWSOME, VIRGIL HALL, and Other Persons in Active Concert or Participation With the Named Defendants — *Defendants*

COMPLAINT—Filed August 12, 1969

Plaintiffs say:

1. That Charles Clark is the duly qualified and acting Superintendent of Schools in and for Floyd County, Kentucky, and that the Floyd County Board of Education is a body politic with powers to conduct the business and maintaining an educational system in Floyd County, Kentucky, and supervising and controlling the property owned by the Floyd County Board of Education.

1A. The Floyd County Board of Education at its July 21, 1969 meeting enacted a resolution prohibiting Vista workers and Appalachian Volunteers from using or occupying any schools or school property in Floyd County.

Said resolution is as follows:

"WHEREAS, the Floyd County School System has demonstrated it's desire to work with Appalachian Volunteers, and Vista Volunteers long after other school systems have thrown up their hands in disgust and,

WHEREAS, as school people, we have volunteered our facilities and time to properly orientate volunteer groups so that they might better understand our problems and thereby arrive at possible workable solutions and,

WHEREAS, too many Vista and other volunteers have demonstrated a complete lack of knowledge of our people and their sense of what is decent in manners and dress and,

WHEREAS, although, the main office of the Appalachian Volunteers is located within a hundred yards of our administrative offices, and has been so located for a two year period, we have never met the director or his co-workers face to face, although, we were hearing of their activities in rural areas. These activities seemed to have been directed toward discrediting all local officials and agencies and,

WHEREAS, the Vista Volunteers and Appalachian Volunteers have been sustained by OEO and private foundation funds for several years, a great majority of Floyd Countians cannot find a single tangible evidence of a worthwhile idea or act attributable to them and,

WHEREAS, it appears that the two volunteer groups mentioned above have through willful ignorance misled some of our residents into extreme suspicion of all local agencies and elected officials to the point where

we are no longer able to help them or indeed to reason with them and,

Whereas, despite our long history of efforts to cooperate with the two groups mentioned above, to our sorrow and utter disgust, because their activities have lead to a situation where our defending ourselves and the democratic processes take so much of our limited time, that we may be missing some opportunities for proper leadership and,

Whereas, although we take this action reluctantly, it must be admitted that we are not guilty of haste after three or four years of trying to cooperate in vain and we are clearly forced into the following action and,

Now Therefore, be it resolved that this Floyd County Board of Education go on record as declaring all schools and school property off limits to the Vista and Appalachian Volunteers and that the Superintendent be ordered to notify all school personnel of this action and that copies of this resolution be sent to the volunteer groups in question as well as all concerned local, state and federal officials.

Motion by Mr. Blair seconded by Dr. Allen that the above resolution be adopted.

Voting for the Motion	Voting against Motion
Mr. Stumbo	None
Dr. Allen	
Mr. Blair	

Approved: August 2, 1969

By: /s/ John M. Stumbo
Chairman

/s/ Charles Clark
Secretary"

2. For the past two (2) weeks, and in increasingly large numbers, the defendants, and/or some or all of them and those acting in concert and active participation with them, have congregated upon property owned by the Floyd County Board of Education on Second Avenue in Prestonsburg, Kentucky, where the plaintiffs maintain their administrative offices. They have interfered with the orderly conduct of the business of the Floyd County Board of Education and have attempted to enter into the building and trespass upon the property of the Floyd County Board of Education. They have done bodily harm to Charles Clark, individually, and as Superintendent of Schools of Floyd County, Kentucky.

3. They are threatening to continue to harass and intimidate these plaintiffs and to trespass upon the property of the Floyd County Board of Education and to interfere with the orderly operation of the school system of Floyd County, Kentucky, and they have threatened to, and will do bodily harm to the Superintendent of Schools and to the other school employees unless they are so restrained from so doing by proper orders of this court.

4. All of the acts of misconduct on the part of these defendants, and those participating with them, were wilful, malicious, wrongful and unlawful and were calculated to, and did, interfere with the Floyd County Board of Education and the Superintendent of Schools and its other employees in the performance of their duties.

5. The defendants have threatened to continue to harass, intimidate, picket and thwart the efforts of the Floyd County Board of Education to carry on its business and these defendants have demonstrated by word and act that they intend to do bodily harm to the Superintendent of Schools and other employees and that irreparable harm, damage and injury will follow and be done to the plaintiffs unless the acts and conduct of the defendants are enjoined and they are so restrained from so doing.

6. These plaintiffs have no adequate remedy at law, or otherwise, for the harm and damage done, or threatened to be done by the defendants because the defendants will continue the harassment and interference as hereinabove set out to the detriment of the school system of Floyd County, Kentucky, which cannot be measured in monetary damages.

7. No injunction or restraining order has been asked, granted or refused by this or any other court.

8. The Hon. Hollie Conley, Judge of the Floyd Circuit Court, is absent from Floyd County and the defendants will continue to harass and intimidate and do physical damage and harm to the property of the plaintiffs and the persons of its employees.

9. The plaintiffs' rights are being, and will be violated by the defendant and the plaintiffs will suffer immediate and irreparable injury, loss and damage before notice can be served and a hearing be had thereon.

WHEREFORE, plaintiffs demand that the defendants, and each and all of them, and those acting in concert with, and collectively, and individually, be enjoined from trespassing upon any property under the ownership, control or operation of the Floyd County Board of Education and in any wise interfering with the Floyd County Board of Education in the exercise of its control of the school properties in Floyd County, Kentucky, and from interfering with the Floyd County Board of Education, its agents and employees, and Charles Clark, Superintendent of Schools, in the performance of their duties in connection with the operation of the school system of Floyd County; that they recover their costs and be granted all proper relief.

/s/ W. W. BURCHETT
Prestonsburg, Kentucky
Attorney for Plaintiffs

State of Kentucky)
County of Floyd) Set.

The undersigned says that the statements contained in the foregoing Complaint are true as he verily believes.

Subscribed and sworn to before me by _____ this _____ day of August, 1969.

NOTARY PUBLIC, STATE AT LARGE, KENTUCKY.

Com. Exp. 4/9/72.